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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,574	09/08/2003	Barbara Gary	MUGE-4	9866

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,574

Applicant(s)

GARY ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/08/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Applicant's election without traverse of Species IV in the reply filed on May 11, 2006 is acknowledged. Accordingly, claim 6 is withdrawn from further consideration pursuant to 37 CFR 1.142(b).
2. The status of the parent application(s) should be updated.
3. The drawings are objected to because reference numeral "60" apparently should be --60'-- in Fig. 5 (pg. 13 ln. 8), and reference numeral "312" (pg. 20 ln. 5) is missing.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "to support the palm above the basin" subject matter and "means" set forth in claim 1, subject matter set forth in claims 3, 13 and 16, "surface" and "for supporting the hand above the basin" subject matter set forth in claim 8, "air compressor" set forth in claims 8 and 15, "opening" set forth in claims 9 and 17, and "three openings" set forth in claims 10 and 17, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended.

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The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The disclosure is objected to because of the following informalities: Reference numerals "124" and "125" illustrated in Fig. 9 lack a detailed description.

Appropriate correction is required.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "to support the palm above the basin" subject matter and "means" set

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forth in claim 1, "housing" and "opening" set forth in claims 1, 8 and 15, "palm support portion" set forth in claims 1, 12 and 15, subject matter set forth in claims 2, 12 and 15, subject matter set forth in claims 3, 13 and 16, "surface" and "for supporting the hand above the basin" subject matter set forth in claim 8, set forth in claim 8, "bottom surface" set forth in claims 9, 11, 17 and 19, and "three openings" set forth in claims 10 and 17, could not be found in the specification.

Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

6. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for two openings for continuously circulating fluid, does not reasonably provide enablement for only one opening. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

7. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in

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the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites "means... for continuously circulating the treatment fluid". Claims 8 and 15 recite similar subject matter. Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

Applicant's state at page 4 of the response filed May 11, 2006 the embodiment of Figs. 8 and 9 is "disclosed as being" provided with the circulating structure of the embodiments of Figs. 1-7. Initially, it is noted applicants' disclosure actually only states that this circulating structure "may be" provided. Indeed, little, if any, of the circulating structure is depicted in the drawing figures elected for examination. In any event, the embodiments of Figs. 1-7 include a receptacle 30 and housing 58 to accommodate the circulating structure. How this feature, for example, could be included in the Figs. 8 and 9 embodiment where there are legs 106 and a support 108 associated with the base 102 has not been disclosed.

8. Claims 9 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 9 is unclear as to whether the "treatment fluid" is intended to be part of the claimed combination since structure of the "device" is defined as being connected thereto, but no positive structural antecedent basis therefor has been defined. Claim 17 is similarly indefinite.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Farrell.

The Farrell reference discloses a device comprising: a housing including a basin 12 and two openings 46,48; a rest 22; and circulating means 44, as claimed. Re claim 1, the rest (bottom) 22 appears to be capable of use as a "hand rest" in the functionally recited manner.

11. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell and Grube.

Although the Farrell hydrotherapy device is not stated as being used for treating a hand, as claimed, attention is directed to the Grube reference which discloses an analogous hydrotherapy device which further is intended to be used for treating a hand (col. 1 lns. 14-16). Therefore, in consideration of Grube, it would have been obvious to one of ordinary skill in the hydrotherapy art to use the Farrell device for hand treatment. Furthermore, Grube teaches provision of an elevated portion 61 to facilitate treatment.

12. Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell, Grube and Webster.

Although the basin of the Farrell treatment device does not include a semi-circular shape, as claimed, attention is directed to the Webster reference which discloses an analogous treatment

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device which further includes a basin 12 having a semi-circular shape Fig. 2). Therefore, in consideration of Webster, it would have been obvious to one of ordinary skill in the treatment device art to associate a semi-circular shape with the Farrell basin in order to facilitate hand treatment.

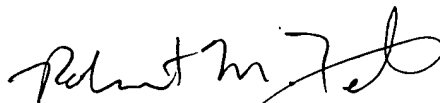
13. Claims 5 and 8-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell, Grube and Webster as applied to claims 1-3 and 7 above, and further in view of Ferber et al.

Although the circulating means of the Farrell treatment device does not include an air compressor, as claimed, attention is directed to the Ferber et al. (Ferber) reference which discloses an analogous treatment device which further includes circulating means having an air compressor 50. Therefore, in consideration of Ferber, it would have been obvious to one of ordinary skill in the treatment device art to associate an air compressor with the Farrell circulating means in order to provide hydrotherapy.

14. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

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15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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